

Memorandum



Date: October 19, 2004

Agenda Item No. 7(F)(1)(A)

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
And Members Board of County Commissioners

From: George M. Burgin
County Manager

Subject: Temporary License Agreement with ERT 163rd Street Mall, LLC
at 1205 N.E. 163 Street, Miami for Miami-Dade Fire Rescue
Property # 2217-00-00

The attached Temporary License Agreement has been prepared by General Services Administration at the request of Miami-Dade Fire Rescue and is recommended for approval.

PROPERTY: 1205 N.E. 163rd Street, Space No. 2006, Miami.

OWNER: ERT 163rd Street Mall, LLC, a publicly traded company on the New York Stock Exchange

PRINCIPALS: William Newman- Chairman of the Board
Glen Rufrano- Chief Executive Officer
Scott MacDonald- President and Chief Operating Officer
Leonard Brumberg- Executive Vice President
John Roche- Executive Vice President and CFO
Steven Siegel- Executive Vice President and Secretary

USE: 775 square feet of storefront space.

JUSTIFICATION: Miami-Dade Fire Rescue desires to continue occupancy of this office for its field personnel serving the surrounding area and to review building plans for fire code compliance. This location has ample parking and easily accessible to the citizens of the northeast area of the County.

TERM OF LICENSE: One year with two additional one-year renewal option periods.

FINANCIAL IMPACT: Annual rent is \$1.00. The rental rate for the renewal term will remain the same.

The total financial impact for Year One of the temporary license agreement is estimated to be \$1,818.00, which is comprised of the following:

Annual Rent	\$ 1.00
Utilities	\$1,584.00
Janitorial & Custodial	<u>\$ 233.00</u>
Total Estimate	\$1,818.00

LEASE CONDITIONS:

The Tenant is responsible for janitorial and custodial services. The Tenant will reimburse the Landlord for its pro-rata share of utilities including electricity, water and trash services used by the Tenant (estimated by the Landlord to be \$132.00 per month).

EFFECTIVE DATES:

Commencing upon approval by the Board of County Commissioners, unless vetoed by the Mayor, and if so, shall become effective only upon an override of this Board and acceptance by tenant; and terminating one year thereafter.

CANCELLATION PROVISION:

The Tenant or the Landlord may cancel at any time by giving thirty (30) days prior written notice to the other party.

FUNDING SOURCE:

Fire District Funds. This item has been budgeted by Miami-Dade Fire Rescue.

CURRENT LEASE:

The current lease was approved by the Board on October 7, 2003, by Resolution No. R-1061-03. The lease commenced on October 17, 2003 for one year with no renewal option periods.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 19, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(F)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor

Agenda Item No. 7(F)(1)(A)

Veto _____

10-19-04

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF TEMPORARY
LICENSE AGREEMENT AT 1205 N.E. 163rd STREET, MIAMI
FLORIDA WITH ERT 163rd STREET MALL, LLC, A FLORIDA
CORPORATION, FOR PREMISES TO BE UTILIZED BY MIAMI-
DADE FIRE RESCUE AS A PLANS REVIEW OFFICE AND
AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY
AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the
accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves
the Temporary License Agreement between Miami-Dade County and ERT 163rd Street Mall,
LLC for premises to be utilized for a plans review office, in substantially the form attached
hereto and made a part hereof; authorizes the County Manager to execute same for and on behalf
of Miami-Dade County, and authorizes the County Manager to exercise any and all other rights
conferred therein.

The foregoing resolution was offered by Commissioner

, who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Sen. Javier D. Souto

Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorrian D. Rolle
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of October, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. HJB

Hugo Benitez

By: _____
Deputy Clerk

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TEMPORARY LICENSE AGREEMENT
PT#: 172941 Type of Lease: Renewal

THIS TEMPORARY LICENSE AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2004, by and between ERT 163rd Street Mall, LLC having an address at 1120 Avenue of the Americas, New York, N.Y. 10036 ("Licensor") and Miami-Dade County, a political subdivision of the State of Florida, having a principal office at 111 NW 1st Street, Suite 2460, Miami, FL 33128 ("Licensee"). Both Licensor and Licensee agree as follows:

1. **LICENSE.** Subject to the terms, provisions and conditions herein contained, Licensor, as owner of the retail development commonly known 163rd Street Mall (the "Shopping Center") hereby grants to Licensee a license (the "License") to conduct business within the space indicated on the attached Exhibit A, known as Space No. 2006 (The "Licensed Premises"), consisting of approximately 775 square feet located within the Shopping Center, together with the non-exclusive use of the Shopping Center common area facilities. Licensee accepts the Licensed Premises in its "as is" condition and acknowledges that the Licensed Premises are adequate to meet its needs and that Licensor shall have no responsibility for the condition of the Licensed Premises upon delivery to Licensee.

2. **NATURE OF LICENSE.** No legal title, easement or other possessory interest in real estate, including any leasehold interest in the Licensed Premises, or any appurtenances thereto, shall be deemed or construed to have been created or vested in Licensee by anything contained in this Agreement.

3. **TERM.** The term of this Agreement shall commence unto the said Licensee for a term of one (1) year, commencing ten (10) days following the approval by the Board of County Commissioners, unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override of this Board, and terminating one year thereafter, ("License Period"), unless sooner terminated in accordance with the terms hereof, for and at a total rental of One Dollar Rent (\$1.00) per year.

(i) Provided this Lease Agreement is not otherwise in default, Licensee through its County Manager or his designee is hereby granted the option to extend this Lease Agreement for two (2) additional one (1) year renewal periods upon the same terms and conditions, by giving Licensor notice in writing at least sixty (60) days prior to the expiration of this Lease Agreement or any extension thereof. Should Licensee neglect to exercise any extension option by the date specified above, Licensee's right to exercise shall not expire until thirty (30) business days after notice from Licensor of Licensor's failure to exercise the option.

(ii) Licensor shall have the right to cancel this Lease Agreement at any time, for any reason, by giving the Licensee at least thirty (30) days written notice prior to its effective date. This provision shall supersede all other provisions of Art. 3(i), Option to Renew only, of this Agreement.

(iii) Licensee, through its County Manager or his designee, shall have the right to cancel this Lease Agreement at any time by giving the Licensor at least thirty (30) days written notice prior to its effective date. This provision shall supersede all other provisions of Art. 3 (i), Option to Renew only, of this Agreement.

(iv) Notwithstanding the foregoing, either Licensor or Licensee may terminate this Agreement upon thirty (30) days prior written notice (the "Termination Notice") to the other party. In such event, this Agreement shall terminate as of the date which is thirty (30) days after receipt of such Termination Notice (the "Termination Date") provided, however, Licensee shall pay to Licensor all sums due and owing through the Termination Date. Licensee shall surrender possession and all of its right, title and interest in and to the Licensed Premises to Licensor in the condition required as if the Termination Date were the date set forth in the Agreement for the expiration of the License Period.

4. **CONSIDERATION.** In consideration of the License granted to it hereby, Licensee agrees to pay Licensor the sum of One Dollar (\$1.00) (the "Fixed Fee").

(i) The Fixed Fee will be paid concurrently with Licensee's execution of this Agreement.

5. **PERMITTED USE.** Licensee shall use and occupy the Licensed Premises only for an office for plans review and other fire rescue business as deemed appropriate by Licensee, and for no other purpose.

6. **INSTALLATION.** Licensee shall not undertake any construction in, nor affix or attach any improvements or items of personal property to the Licensed Premises during the License Period without first receiving the prior written approval of Licensor.

7. **TRADE NAME.** Licensee shall operate its business in the Licensed Premises only under the trade name Miami-Dade Fire Rescue so long as the same shall not be held to be in violation of any applicable law.

8. **CONDUCT OF BUSINESS.** Licensee shall conduct its business in the Licensed Premises in a first class manner and shall abide by all rules and regulations existing or established by Licensor from time to time for tenants and other licensees in the Shopping Center as shown on the attached Exhibit B. Licensee hereby assumes all responsibility for obtaining and keeping effective all licenses, permits and approvals necessary to allow the operation of the business as described herein, and shall otherwise comply with all applicable governmental rules and regulations concerning such operation. Licensee shall be responsible for cleaning the area in and around the Licensed Premises. Licensee shall not distribute handbills, pamphlets or other literature of any kind or nature from the Licensed Premises or within the Shopping Center unless first approved by Licensor.

9. **INDEMNITY AND INSURANCE.** Licensee does hereby agree to indemnify and hold harmless the Licensors to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the Licensee shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of One-Hundred Thousand Dollars (\$100,000.00), or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of Two-Hundred Thousand Dollars (\$200,000.00) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the Licensee. However, nothing herein shall be deemed to indemnify the Licensors from any liability or claim arising out of the negligent performance or failure of performance of the Licensors or any unrelated third party. Licensee represents that it is self-insured, and shall provide evidence of such coverage to the Licensors upon execution of the lease. All personal property placed or moved in the premises above described shall be at the risk of the Licensee or the owner thereof. Licensors shall not be liable to the Licensee for any damage to said personal property unless caused by or due to the gross negligence or willful misconduct of Licensors, Licensors' agents or employees.

10. **EXPIRATION OR TERMINATION.** In the event Licensors reasonably determines the Licensee has failed to comply with the provisions hereof, then Licensors may terminate and revoke this License at any time, upon ten (10) days' prior written notice. Upon expiration of the License Period, or termination of this License, Licensee shall quietly and peaceably surrender the Licensed Premises in as good condition as the same were at the time of Licensee's entry thereon and shall remove all fixtures, equipment, and other things placed by Licensee on the Licensed Premises hereunder and if Licensee shall fail to do so, Licensors shall have the right to make such removal and restore the Licensed Premises at Licensee's expense, the amount of which expense Licensee shall pay to Licensors on demand.

11. **DESTRUCTION OF LICENSED PREMISES.** If the Licensed Premises are damaged by fire or other casualty and rendered untenable for period of more than ten (10) days, Licensee or Licensors may elect to terminate this Agreement upon twenty (20) days' written notice to the other party. Licensors shall not be liable or obligated to Licensee to any extent whatsoever by reason of any fire or other casualty damage to the Licensed Premises, or any damages suffered by Licensee by reason thereof, or the deprivation of Licensee's possession of all or any part of the Licensed Premises.

12. **SIGNS.** All signage used at the Licensed Premises shall conform to Licensors' sign criteria, and moreover, the size, content, design and location of all signage shall be subject to the prior written approval of Licensors.

13. **RELOCATION.** Licensors shall have the right at any time, upon ten (10) days' prior written notice to Licensee, to relocate Licensee to a reasonable alternative location as may be available in the Shopping Center. If space is available and Licensee elects to move, then Licensee shall have ten (10) additional days to relocate. In the event no alternative location is available, or Licensee does not elect to move, Licensee shall have an additional twenty (20) days to vacate the Licensed Premises and the License will be terminated at the conclusion of the thirty (30) day period.

14. **NOTICES.** All notices, demands, requests or other instruments which may be or are required to be given hereunder shall be sent to Licensee by personal delivery, recognized overnight courier or by certified mail or regular mail to the address set forth on the first page of this Agreement, and shall be deemed to have been delivered on the date of receipt or refusal thereof; and if sent to Licensors, by certified mail, return receipt requested, to the address set forth on the first page of this Agreement, or such other address as Licensors may establish from time to time, and shall be deemed to have been delivered on the date of receipt or refusal thereof.

15. **UTILITIES.** To be billed by Licensors and paid by Licensee - electric and trash

16. **LIABILITY FOR DAMAGE OR INJURY.** Licensee shall not be liable for any damage or injury which may be sustained by any party or person on the Licensed Premises other than the damage or injury caused solely by the negligence of Licensee, subject to all limitations of Florida Statutes, Section 768.28.

17. **REPAIRS.** Licensee shall keep the Licensed Premises in good condition and repair, ordinary wear and tear excepted, and shall make all necessary repairs thereto and shall comply with all laws, regulations, etc. applicable thereto.

18. **BROKER.** Each party represents to the other that no broker has been involved in this transaction and if any claims for brokerage commissions or fees are ever made in connection with this transaction, the party whose representation was inaccurate shall indemnify and hold harmless the other from and against any and all such claims or demands with respect to any brokerage fees or agent's commissions or other compensation.

19. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Shopping Center is located and shall not be modified, altered or amended except in writing as agreed to by the parties hereto.

20. **TRANSFER OR ASSIGNMENT.** Licensee shall not assign or transfer its License.

21. **TRUST CLAUSE.** If New Plan Realty Trust is the Licensors hereunder, then this Agreement and all documents, agreements, understandings and arrangements relating to this transaction have been negotiated, executed and delivered on behalf of New Plan Realty Trust by the Trustees or officers thereof in their representative capacity under the Amended and Restated Declaration of Trust of New Plan Realty Trust dated as of January 15, 1996, as amended, and not individually, and bind only the Trust Estate of New Plan Realty Trust, and no Trustee, officer,

employee, agent or shareholder of New Plan Realty Trust shall be bound or held to any personal liability in connection with the obligations of New Plan Realty Trust thereunder, and any person or entity dealing with New Plan Realty Trust in connection therewith shall look solely to the Trust Estate for the payment of any claim or for the performance of any obligation thereunder. The foregoing shall also apply to any future documents, agreements, understandings, and arrangements which may relate to this transaction.

22. SECURITY DEPOSIT.

INTENTIONALLY DELETED.

23. INTEREST, LATE CHARGES AND RETURNED CHECK FEES.

(a) If any check from Licensee delivered in full or partial payment of any amounts due hereunder is not honored because of insufficient funds, uncollected funds, or any other reason, Licensee shall pay to Licensor an administrative charge of Fifty Dollars (\$50.00) per dishonored check and, at Licensor's option, all subsequent payments due from Licensee hereunder shall be made by cash, bank draft, certified check, money order or electronic funds transfer directly to the order of Licensor, its managing agent or designee.

(b) In the event that any payment herein provided shall become overdue for a period in excess of ten (10) days, a "late charge" of five cents (\$0.05) for each dollar (\$1) so overdue shall become immediately due to Licensor, as liquidated damages for failure to make prompt payment.

(c) All payment becoming due under this Agreement and not paid when due shall bear interest from the date upon which the Licensor gives the Licensee written notice that such payment(s) is past due until received by the Licensor in readily available funds at the lesser of: (i) four percent (4%) per annum above the prime rate announced from time to time by Chase Manhattan Bank, N.A. or its successor; or (ii) the highest lawful rate of interest permitted at the time in the state in which the Shopping Center is located. Notwithstanding the foregoing, if the Licensor has sent to Licensee a notice of nonpayment, and during the same calendar year in which said notice of nonpayment has been sent to Licensee the Licensee shall thereafter fail to make a payment when due, then such subsequent late payment shall bear interest from the applicable due date until paid at the rate set forth above without the requirement of notice.

24. TRANSFER BY LICENSOR. LIABILITY OF LICENSOR. Anything in this Agreement to the contrary notwithstanding, Licensee agrees that it shall look solely to the estate and property of the Licensor in the land and building of which the Licensed Premises are a part, and subject to prior rights of any mortgagee of the premises, for the collection of any judgment (or other judicial process) requiring the payment of money by Licensor in the event of any default or breach by Licensor with respect to any of the terms, covenants and conditions of this Agreement to be observed and/or performed by Licensor, and no other assets of the Licensor shall be subject to levy, execution or other procedures for the satisfaction of Licensee's remedies. In the event Licensor transfers this Agreement or its interest therein, upon such transfer Licensor will be released from all liability and obligations hereunder, provided that the transferee assumes the obligation of this Agreement. Licensor hereunder shall have the right to freely assign this Agreement without notice to or the consent of Licensee.

IN WITNESS WHEREOF, the parties have caused this Temporary License Agreement to be executed as of the day and year first above written.

ATTEST,

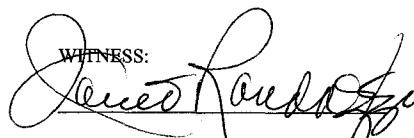
LICENSEE:
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

By: _____
George M. Burgess,
County Manager

LICENSOR:
ERT 163rd Street Mall, LLC
a Delaware limited liability company

WITNESS:


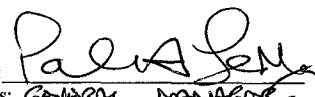
By: 
Its: General Manager

EXHIBIT B
Temporary Occupancy Rules

Design Submission Requirements. All improvements, merchandising and visual presentation are subject to approval by Licensor.

Business name and Signage. Licensee shall operate the Temporary Space under the trade name set forth in the Agreement and any change in such trade name is subject to written approval by Licensor. All signage is subject to Licensor's approval. No handwritten signs shall be permitted. Licensee shall not place, affix, or maintain any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items outside, on or within twenty-four inches (24") of the Lease Line, the storefront, the glass panes and supports of the show windows, or any window, door, roof or Perimeter Demising Partition of the Premises, except such signs as Licensor shall approve in writing.

Merchandise and Use Clause. Licensee shall use the Temporary Space only for the use permitted in the Agreement.

Dress Code, Eating, Drinking and Smoking. Employees shall dress in a professional fashion at all times. Activities such as smoking are not allowed at any time in the Licensee's sales area.

Housekeeping, Stock and Store Display. Temporary Space shall be kept neat and safe at all times.

Operation of Business. Licensee shall conduct its business as a separate entity, responsible for all its own product, inventory and employees.

Hours. Intentionally Deleted.

Deliveries of Product. Licensee, when accepting deliveries of product(s) shall instruct its vendors to use the appropriate Shopping Center delivery dock or other area designated by the Shopping Center management.

Licensee shall use its best efforts to complete or cause to be completed, all deliveries, loading, unloading, and services to the Premises prior to 10:00 a.m. of each day. Licensee shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from 10:00 a.m. to 9:00 p.m. of each day.

Display/Solicitation. Licensee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicles parked in the parking area of the Mall, whether belonging to Licensee, or to Licensee's agent, or to any other person, nor shall Licensee distribute, or cause to be distributed, in the Mall, any handbills or other advertising devices.

Licensee shall not display or sell merchandise, or place carts, portable signs, devices or any other objects in the Common Area and Licensee shall not solicit or distribute materials in any manner in the Common Area.

Licensee shall utilize no medium which can be heard or experienced outside of the Premises; including music or flashing lights.

Trash Disposal. Licensee will deposit its trash only in the trash compactors provided by the contracted company.

Parking. Employees of Licensee shall not park their automobiles in those automobile parking areas of the Common Area which Licensor may from time to time designate for use by patrons of the Mall. Licensee and its employees shall park their vehicles a minimum of 12 spaces out from the mall or any areas Licensor designates. During the holiday season, this minimum requirement is changed to 15 spaces out from the mall. If Licensee or its employees fail to park their vehicles in the designated parking areas, Licensor may charge Licensee ten dollars (\$10.00) per vehicle per day for each day or partial day that any vehicle is parked in any area other than designated; provided, however, Licensor agrees to give Licensee written notice of the first violation of this provision. If said violation is not corrected, then the aforesaid fine shall be levied and Licensee shall pay the same within ten (10) days of Licensor's request. After notice of such first violation, no prior notices of any subsequent violation shall be required.

Repairs, Maintenance, Utilities, HVAC Unit by Licensee. Licensee shall, at all times during the Term, maintain at its sole cost and expense, the License Area in good, clean, safe, and tenantable condition, and shall make all necessary replacements and repairs to the License Area except for structural repairs.

Licensee's obligation to repair and maintain the License Area shall include, without limitation repairing, maintaining, and making replacements to such items as floor coverings, ceilings (other than structural ceilings), utility meters, pipes, and conduits, all fixtures which are installed by Licensee and/or which exclusively serve the License Area, the storefront, all of Licensee's signs, security grilles, windows, glass, and door frames. In addition to all other remedies of Licensor under this Agreement, if: 1) Licensee does not complete its obligations to repair and maintain the License Area as set forth herein; or 2) Licensor, in the exercise of its sole discretion, determines that emergency repairs are necessary, or 3) repairs or replacement of any such portion of the License Area or the Center are made necessary by any act, omission or negligence of Licensee or its agents, employees, assignees, then in any such event, Licensor may take such repairs without liability to Licensee for any loss or damage that may accrue to Licensee, its merchandise, fixtures, or other property or to Licensee's business by reason of such repair. Further, upon completion of any such repair, Licensee shall pay upon demand, as additional Fixed Fee, Licensor's costs for making such repairs together with Licensor's administrative costs related thereto, which amount shall equal 1.20 times the total cost of such repair. Licensee shall return the License Area to Licensor in broom condition and

restored to at least as good a condition as it was in before Licensee took possession thereof. No work shall be performed in or to License Area without Licensor's prior written approval.

Utilities. Licensee shall be responsible for obtaining electrical service at the Premises and shall pay all bills therefore when due provided, however, if Licensor shall elect to furnish electricity to Licensee, Licensor shall make available to Licensee at the Premises electrical current for use in Licensee's business and Licensee shall pay for said electrical service as billed by Licensor, or as set forth in this Exhibit B if set forth therein. Licensor shall not be required to provide telephone or any other utilities to the Premises.

Utility Charge: Electric/ water/sewer/trash to be billed to Licensee by Licensor or the appropriate utility service.

HVAC In-Line Repair and Service Cost: Licensee shall be responsible for any and all costs and expenses associated with installation, maintenance and repair of the License Area's heating, ventilation and air conditioning (HVAC) system, as determined in the sole and absolute discretion of Licensor. Said HVAC repair and service cost shall be billed to Licensee according to the following occupancy and pro-rata formula and shall be deemed payable immediately upon receipt of an invoice from Licensor:

HVAC In-Line Repair and Service Cost To Licensee: 100%- 1- 12 months.

Additional Provisions:

One (1) key to employee restroom on second floor will be issued to your office staff. Key must be returned if lease is terminated.